

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 4, 2007 Session

CHRIS JONES v. BEDFORD COUNTY, TENNESSEE

**Appeal from the Circuit Court for Bedford County
No. 9276 Franklin Lee Russell, Judge**

No. M2006-02710-COA-R3-CV - Filed October 31, 2007

A former inmate of the Bedford County Jail alleges in this negligence action under the Governmental Tort Liability Act that he was sexually assaulted by a corrections officer employed by the sheriff's department and that the county is liable due to the negligent acts and omissions of supervisory personnel of the sheriff's department for "failing to properly supervise" Correctional Officer Raymur when the County "knew, or should have known of his sexually oriented behavior." The trial court summarily dismissed the claim upon a finding there was no evidence the sheriff's department knew or should have known that it was reasonably foreseeable the corrections officer would sexually assault the plaintiff. We have concluded the record contains facts sufficient to create a dispute of fact as to the issue of foreseeability. Therefore, we vacate the summary dismissal of the plaintiff's claim for negligent supervision and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Vacated and Remanded**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Phillip L. Davidson, Nashville, Tennessee, for the appellant, Chris Jones.

S. Todd Bobo, Shelbyville, Tennessee, for the appellee, Bedford County, Tennessee.

OPINION

In January of 2001, the Bedford County Sheriff's Department hired Daniel Raymur as a corrections officer in the Bedford County Jail.¹ Five months later, Chris Jones ("plaintiff") began a period of incarceration in the same jail. The plaintiff alleges that Raymur sexually assaulted him several times during that period of incarceration, beginning in October of 2001 and continuing until

¹The plaintiff asserted a claim for the negligent hiring of Raymur that was also summarily dismissed; however, the plaintiff has not raised that as issue on appeal.

the last alleged assault on March 1, 2002. On March 5, 2002, four days after the final alleged assault, the plaintiff filed a formal complaint with Bedford County jail officials. After the formal complaint, Raymur was placed on administrative leave and subsequently discharged. The plaintiff was released from jail on April 4, 2002, and filed suit in the Bedford County Circuit Court against Bedford County (“County”) on September 24, 2002, for injuries allegedly received as a result of the sexual assaults by Raymur.

The County filed a motion for summary judgment on July 10, 2003, based on the argument that it was immune from liability pursuant to the Tennessee Governmental Tort Liability Act². On December 2, 2004, the trial court entered a Memorandum Opinion that deferred a decision until the parties took necessary procedural steps. The plaintiff filed an amended complaint that added the allegation that the County was “negligent by failing to properly supervise Raymur when they knew, or should have known of his sexually oriented behavior.” Thereafter, the County filed a second motion for summary judgment.

On August 23, 2005, the trial court issued a Supplemental Memorandum Opinion that granted summary judgment to the defendant. On the claim of negligent supervision, the trial court stated that “[a]s to the alleged problems with supervision and discipline, it is important to know *what* was known, *by whom* it was known, and *when* it was known in order to assess the foreseeability of the sexual abuse.” In its opinion, the trial court found that while there was evidence that Raymur had made references and remarks that were juvenile, in poor taste, and unprofessional, they did not suggest an inclination to abuse men sexually or molest inmates. The trial court also found that most of the information relied on by the plaintiff to show the foreseeability of Raymur’s conduct was not brought to the attention of the sheriff’s department until after the plaintiff made his formal complaint. In granting summary judgment, the trial court made the following conclusion:

Taking all of the plaintiff’s evidence as true (and even accepting unsworn documents submitted by the plaintiff as true), no cause of action is stated against Bedford County because the Sheriff’s Department had no information that would have made it reasonably foreseeable that Raymur would sexually harass and abuse the plaintiff or any other inmate.

This appeal followed.

STANDARD OF REVIEW

The issues were resolved in the trial court upon summary judgment. Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Advertising & Publishing Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). This court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997). We consider the evidence in the light most favorable to the non-moving party and resolve all inferences in that party's favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). When

²Tenn. Code Ann. § 29-20-101 et. seq.

reviewing the evidence, we first determine whether factual disputes exist. If a factual dispute exists, we then determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993); *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998).

Summary judgments are proper in virtually all civil cases that can be resolved on the basis of legal issues alone, *Byrd v. Hall*, 847 S.W.2d at 210; *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001); however, they are not appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. The party seeking a summary judgment bears the burden of demonstrating that no genuine disputes of material fact exist and that party is entitled to judgment as a matter of law. *Godfrey v. Ruiz*, 90 S.W.3d at 695. Summary judgment should be granted at the trial court level when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion, which is the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001).

The court must take the strongest legitimate view of the evidence in favor of the non-moving party, allow all reasonable inferences in favor of that party, discard all countervailing evidence, and, if there is a dispute as to any material fact or if there is any doubt as to the existence of a material fact, summary judgment cannot be granted. *Byrd v. Hall*, 847 S.W.2d at 210; *EVCO Corp. v. Ross*, 528 S.W.2d 20 (Tenn. 1975). To be entitled to summary judgment, the moving party must affirmatively negate an essential element of the non-moving party's claim or establish an affirmative defense that conclusively defeats the non-moving party's claim. *Cherry v. Williams*, 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

ANALYSIS

The Tennessee Governmental Tort Liability Act codifies the common law rule that “all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities.” Tenn. Code Ann. § 29-20-201(a). The statutory scheme, however, also provides exceptions:

“[A]ll governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities,” Tenn.Code Ann. § 29-20-201(a), subject to statutory exceptions in the Act's provisions. For instance, a general waiver of immunity from suit for personal injury claims is provided in section 29-20-205 “for injury proximately caused by a negligent act or omission of any employee within the scope of his employment,” unless the injury arises out of one of several enumerated exceptions to this section, such as the intentional tort exception.

Limbaugh v. Coffee Med. Ctr., 59 S.W.3d 73, 79 (Tenn. 2001). Although certain intentional torts are excluded from the exception, not all intentional torts are excluded. *Id.* The intentional torts

subject to the statutory waiver are “false imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or civil rights.” Tenn.Code Ann. § 29-20-205(2). The intentional torts of assault and battery, however, are not excluded. *See Limbaugh*, 59 S.W.3d at 84. To the contrary, a county may be held liable for injuries resulting from an assault and battery committed by a county employee if it is established that the injuries inflicted on the plaintiff were “proximately caused by a negligent act or omission” of supervisory personnel due to the failure to take reasonable precautions from the foreseeable risk.³ *Limbaugh*, 59 S.W.3d at 84.

Here, the plaintiff contends Bedford County is liable due to the negligent acts and omissions of supervisory personnel of the sheriff’s department for “failing to properly supervise” Correctional Officer Raymur when the County “knew, or should have known of his sexually oriented behavior.” The trial court summarily dismissed the plaintiff’s claim based upon the finding that “the sheriff’s department had no information that would have made it reasonably foreseeable that Raymur would sexually harass and abuse the plaintiff or any other inmate.”⁴ Therefore, for purposes of this appeal, the dispositive issue is whether the injuries inflicted on the plaintiff were “a foreseeable consequence” of the Sheriff Department’s failure to take reasonable precautions to protect inmates such as the plaintiff from the risk of abuse by Correctional Officer Raymur. *Limbaugh*, 59 S.W.3d at 84.

In order for the County to be liable for failing to properly supervise its employee, it must be established that the County should have reasonably foreseen or anticipated that the plaintiff would be at risk of the injuries complained about. *Limbaugh*, 59 S.W.3d at 84; *Mason v. Metro. Gov’t of Nashville*, 189 S.W.3d 217, 222 (Tenn. Ct. App. 2005), perm to appeal denied, (Tenn. 2006). The

³In *Limbaugh*, the Court noted that “section 29-20-205 of the GTLA removes immunity for injuries proximately caused by the negligent act or omission of a governmental employee except when the injury arises out of *only those specified torts enumerated in subsection (2).*” *Id.* at 84 (emphasis added). The Court then held:

Applying our conclusions to the present case, we first reiterate that Ms. Ray’s assault of Ms. Limbaugh [the plaintiff] was a foreseeable consequence of [Coffee Medical Center]’s failure to take reasonable precautions to protect its residents from the risk of abuse by this aggressive nursing assistant. Based on the plain language of section 29-20-205, the injury inflicted on Ms. Limbaugh was “proximately caused by a negligent act or omission” of this nursing home’s supervisory personnel. Although it is that negligence of which the plaintiff complains, it is clear that Ms. Limbaugh’s injuries “arose out of” the intentional torts of assault and battery committed by Ms. Ray. Because these torts are conspicuously absent from the intentional tort exception rendering governmental entities immune from liability for injuries, we hold that the clearly negligent defendant is not immune under this exception.

Limbaugh, 59 S.W.3d at 84.

⁴A claim of negligence requires proof of the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) an injury or loss; (4) cause in fact; and (5) proximate, or legal, cause. *Mason v. Metro. Gov’t of Nashville*, 189 S.W.3d 217, 221 (Tenn. Ct. App. 2005), perm. to appeal denied, (Tenn. 2006) (citing *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995)). Foreseeability is an element of proximate, or legal, cause. *Mason*, 189 S.W.3d at 221.

foreseeability requirement does not, however, require that the County foresee the exact manner in which the injury takes place, provided it is determined that the County could foresee, or through the exercise of reasonable diligence should have foreseen, the general manner in which the injury or loss occurred. *McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn. 1991) (citing *Roberts v. Robertson County Bd. of Educ.*, 692 S.W.2d 863, 871 (Tenn. Ct. App. 1985); *Wyatt v. Winnebago Indus., Inc.*, 566 S.W.2d 276, 281 (Tenn. Ct. App. 1977)).

Because the trial court disposed of this matter on summary judgment on the issue of foreseeability, we must determine whether the facts concerning the issue of foreseeability are undisputed and whether the inferences reasonably drawn from these undisputed facts support but one conclusion, that the assault by the corrections officer on an inmate was not foreseeable. *See Pero's Steak & Spaghetti House*, 90 S.W.3d at 620; *Webber*, 49 S.W.3d at 269; *Byrd*, 847 S.W.2d at 210; *EVCO Corp.*, 528 S.W.2d at 24-25.

The trial court's analysis of the foreseeability of the assaults on the plaintiff focused on *what* was known, *by whom* it was known, and *when* it was known. First, the trial court addressed a reference, in a report filed by Raymur on August 18, 2001, to the genitalia of an inmate as "Mr. Winky." As for a statement given by Sgt. Levi Shouse, Raymur's immediate supervisor,⁵ on March 6, 2002, the trial court concluded that the statement, which had been given after the plaintiff filed a formal complaint with jail officials, described an incident that occurred after the plaintiff registered his complaint.⁶ Further, the trial court noted that "[t]he other information upon which the plaintiff relies to support the view that the sheriff's department should have foreseen sexual abuse all came to light after March 1, 200[2], and most of it turned up in the investigation of the plaintiff's complaint made on March 1, 200[2]." Based on the findings above, the trial court concluded that the sheriff's department had "no information" that would have made the conduct alleged by the plaintiff reasonably foreseeable.

The record contains the affidavit of Jason Carter, a corrections officer who worked with Raymur at the sheriff's department the entire time Raymur worked there. Carter stated that "[o]n different occasions, I, Officer Carter, have seen and heard Officer Raymur make sexual slurs towards male inmates. On some occasions I have heard Officer Raymur say, 'ooh look, look at that juicy ass, or I would like to get a hold of that.'" In a subsequent statement, Carter stated that "[d]uring the time I worked for the sheriff's department (Corrections) I did witness Daniel T. Raymur harassing [the plaintiff]. He would direct sexual slurs toward him, and smack him on his buttocks. This happened several times throughout the time I worked with Raymur."

⁵ While it is unclear from the record who was Raymur's immediate supervisor, taking all inferences in favor of the plaintiff, there is a reasonable inference that Shouse was Raymur's supervisor.

⁶ From the same statement of Sgt. Shouse, the trial court addressed the accusation that "Raymur on one occasion pulled down the pants of a male inmate named Noriega." The trial court dismissed this accusation because there was no evidence that Noriega had made any type of complaint about this, there was no sworn record that the incident occurred, and no evidence that anyone in authority was made aware of the incident before March 6, 2002.

Although the statements above do not identify the dates on which Carter witnessed these events, it is significant to note that Raymur was suspended within one week of the last assault on the plaintiff, and the first statement provided by Carter was made only one day after the formal complaint was filed and five days after the last alleged assault by Raymur. Therefore, when Carter says he witnessed inappropriate behavior on “several occasions,” it is more than reasonable to infer that some of the “several occasions” occurred before the last assault on the plaintiff.

The statement by Sgt. Shouse provides evidence that a supervisor in the sheriff’s department was on notice of Raymur’s inappropriate behavior. Sgt. Shouse’s statement, which was also given only one day after the plaintiff’s formal complaint and five days after the last alleged assault, states that “inmates said [Raymur] pulled down the pants of Israel Noriega. I asked Raymur about this and he said he did not. *This was the last I heard of that till this investigation.*” (emphasis added). The significant fact, as it pertains to notice, is that Sgt. Shouse admitted he knew of this complaint *prior to* “this investigation.” The investigation commenced on March 5; thus, although there is no specific date given for when this incident occurred or when Sgt. Shouse knew of the incident, it is reasonable to infer from the statement that Sgt. Shouse knew of the alleged incident prior to March 1, the date of the last assault on the plaintiff.

The trial court also concluded that no one in authority over Raymur knew of any of the alleged incidents. We, however, are unable to conclude that this fact is undisputed. The plaintiff asserted that Sgt. Shouse was Raymur’s immediate supervisor. The County did not contest this assertion or provide any evidence to the contrary, and at least it is reasonable to infer that Sgt. Shouse, one of Raymur’s superiors, obtained knowledge of Raymur’s alleged behavior prior to the last assault. Accordingly, if Sgt. Shouse was acting in the course and scope of his employment with the sheriff’s department when he was informed of the alleged actions by Raymur, his knowledge may be imputed to the County. *See Hurst Boillin Co. v. S. S. Jones*, 279 S.W. 392, 393 (Tenn. 1925).

Considering all of the evidence in the record in the light most favorable to the plaintiff, and allowing all reasonable inferences in favor of the plaintiff, we find that there is sufficient evidence to create a dispute of material fact as to whether the sheriff’s department had information that would have made it reasonably foreseeable that Raymur may assault the plaintiff. Accordingly, summary judgment was not appropriate.

IN CONCLUSION

The matter is remanded to the Circuit Court of Bedford County for further proceedings consistent with this opinion. Costs of appeal are assessed against the defendant.

FRANK G. CLEMENT, JR., JUDGE